IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

W.P. No. 1721 of 2002 (SB)

Naresh Singh Rathore & another ……. Petitioner

Versus

State of Uttaranchal & others ……..Respondents

Mr. Rakesh Thapliyal, learned counsel for the petitioners.
Mr. Rajendra Dobhal, learned counsel for respondent No. 2 to 4.

Hon'ble P.C. Verma, A.C.J.

This writ petition has been filed by he petitioners seeking a writ of certiorari to quash the office order dated 12th June, 2001 passed by respondent No. 3 and the order dated 12th September, 2002 passed by respondent No. 4 and further to command the respondents to accord approval to the panel for the post of Assistant Accountant forthwith and issue the appointment letter to the petitioners.

Heard Mr. Rakesh Thapliyal, learned counsel for the petitioners and Mr. Rajendra Dobhal, learned counsel for respondents No. 2 to 4.

An advertisement was issued for filling up the posts of Assistant Accountant in the month of November, 1997 as per the statute of the University. In pursuance of the said advertisement, 40 applications were revived and thereafter interviews were held by the Selection Committee on 26th by May, 1998 and 27th May, 1998. But the result has not been declared.

Learned counsel for the petitioner has submitted that a panel of selected candidates have been prepared and for appointment, the approval was sought from the State Government so that appointment letters cold be issued for appointment of the selected candidates. In response to the approval sought by the University, the State Government replied the University that there is no need for approval as the approval was already granted. Learned counsel for the petitioners further submitted that now after the reply received from the Government written by the Deputy Secretary dated 29th September,

2000, the University by a resolution has resolved to fill up the 100% posts by promotion.

It is settled law that the selection and appointment is to be governed as per the terms and conditions of the rules existing at the time of advertisement and the conditions contained in the advertisement. Subsequent amendment will not affect the selection already commenced. In this regard, reliance if placed on the case of N.T. Bevin Katti Vs Karnataka Public Service Commission reported in AIR 1990 Supreme Court 1233, wherein it has been held as under:

> *"11.There is yet another aspect of the question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing Rules or Government Orders, and if it further indicates that extent of reservations in favour of various categories, the selections of candidates in such a case must be made in accordance with the then existing Rules and Government Orders. Candidates who apply, and undergo written or viva voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidates has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallizes on the date of publication of advertisement, however, he has no absolute right in the matter. If the recruitment Rules are amended retrospectively during the pendency of selection, in that even selection must be held in accordance with the amended Rule. Whether the rules have retrospective effected or not, primarily depends upon the language of the Rules ant its construction to ascertain the legislative intent. The legislative intent is a ascertained either by*

express provision or by necessary implication, if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the Rules and order with were in force on the ate of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant Rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right for selection, but if he is eligible and is otherwise qualified in accordance with the relevant Rules and the terms and conditions in the advertisement, he does acquire a vested right for being considered for selection in accordance with the Rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the selection unless amended Rules are retrospective in nature."

In view of this legal position, the respondents – University is directed to declare as per the terms and conditions candidates and to appoint the candidates as per the terms and conditions contained in Advertisement in pursuance of which, the selection has been held.

With the aforesaid directions, the writ petition is disposed of finally. No order as to costs.

(P. C. Verma, A.C.J.)

Dt. 29.06.2004
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